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# In the Supreme Court of the United States

OCTOBER TERM, 1976

**No. 76-392**

FIRST NATIONAL BANK IN ST. LOUIS,
a National Banking Association,
*Petitioner,*

vs.

STATE OF MISSOURI, ex rel. W. R. KOSTMAN,
Commissioner of Finance,
*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

## BRIEF FOR RESPONDENT IN OPPOSITION

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## INDEX


Opinions Below ..... 1

Jurisdiction ..... 1

Question Presented ..... 2

Constitutional Provisions and Statutes Involved ..... 2

Statement ..... 2

Reasons for Denying Writ ..... 3

Conclusion ..... 6


## Citations

### CASES


*First National Bank* v. *Dickinson*, 396 U.S. 122 (1969) ..... 3, 4, 5

*Illinois ex rel. Lingnoul* v. *Continental Ill. Bk.*, 536 F.2d 176 (7th Cir. 1976) ..... 5

*I.B.A.A.* v. *Smith*, 534 F.2d 921 (D.C.Cir. 1976) ..... 5

*Colorado* v. *First Nat. Bk. of Ft. Collins*, Nos. 75-1523, 75-1611 (10th Cir. Aug. 20, 1976) ..... 5


### STATUTES


12 U.S.C. §36(f) ..... 4, 5

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## BRIEF FOR RESPONDENT IN OPPOSITION

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## OPINIONS BELOW

The opinion of the Court of Appeals is reported at 538 F.2d 219 (8th Cir. 1976) and is appended to the petition as Appendix A. The opinion of the District Court, reported in 405 F.Supp. 733 (E.D. Mo. 1975), is appended to the petition as Appendix B.

## JURISDICTION

The judgment of the Court of Appeals was entered on July 20, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## QUESTION PRESENTED

Are remote teller machines (CBCTs) offering a wide array of banking services operated by a national bank branches as defined by 12 U.S.C. §36(f)?

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

*Federal Statutes*: 12 U.S.C. §36(c); 12 U.S.C. §36(f).

*Missouri Statutes*: §362.105, RSMo 1969; §362.107, RSMo 1969, as amended.

The relevant federal and state statutes are quoted in full in Appendix C and D, respectively of the petition.

## STATEMENT

The statement of the case set forth in the petition is generally satisfactory. An advertising brochure prepared by petitioner contained in the stipulated record below accurately portrays petitioner CBCTs as follows:

**Make all of these transactions anytime**

- MAKE CASH WITHDRAWALS
  - From your checking account
  - From your savings account
  - From Master Charge
- MAKE DEPOSITS
  - To your checking account
  - To your savings account



- MAKE PAYMENTS (loans, Master Charge)
  - By deducting from your checking account
  - By deducting from your savings account
  - By inserting payment envelope into Depository
- TRANSFER MONEY
  - From your checking account to your savings account
  - From your savings account to your checking account
  - From Master Charge to your checking account

The brochure further advises customers: **"Just push a button and 24-hour banking is easy!", "24-hour banking is here! Daytime . . . nighttime . . . weekends . . . holidays . . . bank anytime at your convenience. We never close!"**

## REASONS FOR DENYING THE WRIT

**The writ should be denied because the decision below is consistent with this Court's decision in First National Bank v. Dickinson, 396 U.S. 122 (1969), and reconsideration of that decision is unwarranted.**

First National Bank in St. Louis, Petitioner, has placed at two leased locations other than its main bank automated teller machines (CBCTs) for use by its customers to make deposits, transfers of funds between accounts, payment (either by deposit or transfer) on obligations owing to the bank and withdrawals of cash in prepackaged amounts

from checking or savings accounts, or as credit card cash advances.

The Eighth Circuit and the District Court found that the CBCTs were branches as that term is defined in §36(f) of the National Bank Act, 12 U.S.C. §36(f). The Court of Appeals also affirmed the district court's holding that such machines were branches under Missouri law.

The determination below that the CBCTs fit within the definition of branch contained in §36(f) is fully consistent with this Court's decision in *First National Bank* v. *Dickinson,* 396 U.S. 122 (1969), hereinafter referred to as "*Dickinson*". In *Dickinson* this court held that a bank-operated armored car which called upon customers of the bank to deliver currency and pick-up deposits fell within the definition of branch contained in §36(f) and that a stationary receptacle located in a shopping center one mile from the bank for the receipt of monies intended for deposit in the bank was also a branch within the meaning of §36(f). There can be no rational basis for distinction for the purpose of §36 between the armored car and stationary receptacle in the *Dickinson* case and the CBCTs in the present case. CBCTs in fact offer more banking services to more customers than were provided by the armored car or stationary receptacle. Thus, by necessity, this Court, if it should grant the writ, will be squarely faced with the question of whether to overrule *Dickinson.*

There is no compelling reason to reexamine the *Dickinson* decision. None of the four circuit courts of appeals which have recently held, without dissent, that CBCTs are branches have suggested that the *Dickinson* decision is ripe for review nor have they called into question the



soundness of the holding or the principles upon which it was based.[1]

As the *Dickinson* court recognized, the Congressional intent behind §36(f) of the McFadden Act was to make branching a matter of states' right. Missouri's power to restrict branching would be eroded beyond recognition if this Court were to hold that restrictions on branching contained in §36 do not apply to CBCTs. CBCTs, if legal for national banks in non-branching states such as Missouri, could readily be established at hundreds of off-premise locations by large national banks but not by state banks. If established, bank customers would be able to transact at distant locations most of the usual and ordinary banking activities which they now transact over the counter at the bank. It is clear that tellers' cages with live bank tellers, at locations similar to where petitioners now operate CBCTs and offering the same services as the CBCTs, would be branches. The figurative replacement of human tellers by machines does not cast sufficient doubt on the situation to warrant this Court's further examination of First National's CBCT operations to determine if it has escaped the definition of branch contained in §36(f). Common sense is sufficient to establish that such installations are branches. Therefore, this case does not warrant the granting of *certiorari.*

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1. In addition to the present decision of the Eighth Circuit, 538 F.2d 219, the other decisions are *Illinois ex rel. Lingnoul* v. *Continental Ill. Bk.*, 536 F.2d 176 (7th Cir. 1976), cert. filed Nos. 75-1900 and 76-17; *I.B.A.A.* v. *Smith,* 534 F.2d 921 (D.C.Cir. 1976), cert. filed No. 76-258; *Colorado* v. *First Nat. Bk. of Ft. Collins,* Nos. 75-1523, 75-1611 (10th Cir. Aug. 20, 1976).

## CONCLUSION

For the foregoing reasons, the petition for a *writ of certiorari* should be denied.

Respectfully submitted,

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